

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 408 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
1 to 5 No.

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ISMAIL @ ANNO ABDUL REHMAN      SHAIKH

Versus

STATE OF GUJARAT

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Appearance:

MR Pahwa for M/S THAKKAR ASSOC. for Petitioner  
MS K.N.VALIKARIMWALA, APP, for the Respondents.

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CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 22/07/98

ORAL JUDGEMENT

The by way of this petition under Article 226 of the Constitution of India has challenged the order of his externment dated 27-3-98 passed by the Sub-Divisional Magistrate, Bharuch-respondent No.1 herein .

The petitioner was served with the show cause notice dated 15-12-97 under Section 59(1) of the Bombay

Police Act ( hereinafter referred to as "the Act") by respondent No.2 calling upon him to show cause as to why he should not be externed for a period of two years from Bharuch district and the two other adjoining districts viz Surat and Vadodara. The petitioner filed his reply on 5th January 1998 against the said show cause notice denying the allegations made against him. Respondent No.2, however, passed the order of externment dated 27-3-98 externing the petitioner for a period of one year from Bharuch district and two other districts viz Surat and Vadodara. The appeal filed by the petitioner has also been dismissed by the Dy Secretary, Home Department vide his order dated 27-3-98 which is also under challenge in this petition.

Various contentions have been urged by Mr.Pahwa, learned Advocate appearing on behalf of the petitioner. However, it is not necessary for me to refer to and deal with all those contentions and narrate the allegations made in the show cause notice against the petitioner, since this petition is required to be allowed only on the ground that the respondent-externing authority has not followed the mandatory requirement of Section 56 of the Act inasmuch as the externing authority must form a subjective opinion that the witnesses are not willing to come forward to give evidence in public against the person sought to be externed by reason of apprehension on their part as regards the safety of their person and property.

Having gone through the notice as well as the impugned order of externment, it is clear that the externing authority has relied upon the statements of the victims only and not recorded a subjective opinion that apart from the victims, there are other witnesses who are not willing to come forward to give evidence in public against the petitioner by reason of apprehension on their part as regards the safety of their person and property. This point is now fully covered by the decision of the Supreme Court in Nawabkhan Abbaskhan vs The State of Gujarat, AIR 1974 SC 1471 wherein the Supreme Court has in paragraph 5 observed as under:

"There is also a second ground on which we must hold the externment order to be invalid. It is well settled that it is a mandatory requirement of Section of Section 56 that the externing authority must form a subjective opinion that witnesses are not willing to come forward to give evidence in public against the person sought to be externed by reason of apprehension on their

part as regards the safety of their person or property. This requirement is clearly not satisfied in the present case.....it is clear that the opinion formed by the Deputy Commissioner of Police is only as regards the witnesses who are victims of the said incidents and not as regards the other witnesses. This opinion would clearly not be the requisite opinion contemplated by the mandatory requirement of Section 56."

In view of this decision, it is clear that the mandatory requirement to be followed by the external authority is lacking in the impugned order and, therefore, the impugned order is illegal and bad.

In the result the petition is allowed. The order dated 27-3-98 passed by respondent No.1 confirming the order of external authority dated 21-1-98 passed by respondent No.2 in External Case No.27/97 is quashed and set aside. Rule is made absolute accordingly with no order as to costs.

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